

*Lynn His deposition  
is on file*

Leon P. Gold (LG-1434)  
William M. Hart (WII-1604)  
PROSKAUER ROSE LLP  
1585 Broadway  
New York, New York 10036  
(212) 969-3000 Telephone  
(212) 969-2900 Facsimile



Jon A. Baumgartner  
PROSKAUER ROSE LLP  
1233 20th Street, N.W., Suite 800  
Washington, D.C. 20036-2396  
(202) 416-6800 Telephone  
(202) 416-6899 Facsimile

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNIVERSAL CITY STUDIOS, INC.;	)	00 Civ. 277 (LAK)(RLE)
PARAMOUNT PICTURES CORPORATION,	)	
METRO-GOLDWYN-MAYER STUDIOS INC.,	)	
TRISTAR PICTURES, INC.; COLUMBIA	)	
PICTURES INDUSTRIES, INC.; TIME WARNER	)	
ENTERTAINMENT CO., L.P.; DISNEY	)	
ENTERPRISES, INC.; AND TWENTIETH	)	DECLARATION OF FRANKLIN
CENTURY FOX FILM CORPORATION,	)	M. FISHER
	)	
Plaintiffs.	)	
	)	
v.	)	
	)	
SHAWN C. REIMERDES, ERIC CORLEY A/K/A	)	
"EMMANUEL GOLDSTEIN;" AND ROMAN	)	
KAZAN.	)	
	)	
Defendants.	)	
	)	
	)	
	)	

I declare, under penalty of perjury, as follows:

- 1 I am the Jane Berkowitz Carlton and Dennis William Carlton Professor of Economics at the Massachusetts Institute of Technology the Massachusetts Institute of Technology, where I have taught for 40 years. I am also a director of the National Bureau of Economic Research and the Chair of the Middle East Water Project, an international project on the economics of water in the Middle East. I received my A.B. from Harvard University in 1956, and my Ph.D. in Economics from Harvard University in 1960.
- 2 I am a fellow and past president of the Econometric Society and for nine years was the editor of that society's journal, *Econometrica*. I am a member of the American Economic Association, from which I received the John Bates Clark Award; a fellow of the American Academy of Arts and Sciences; and have been a recipient of a John Guggenheim Fellowship.
- 3 My fields of specialization within economics are industrial organization, microeconomics, and econometrics. I am the author of 15 books and well over 100 articles. In the course of my scholarly research and my consulting work, I have studied issues of competition and monopoly in a large number of industries. I have written extensively in the area of antitrust economics. I have provided expert consultation and testimony in numerous cases regarding issues of antitrust, statistics, and econometrics. I have testified at trial, in deposition, or by affidavit in more than 40 cases in the last 10 years. These cases are listed in my curriculum vitae, which is attached as Appendix 1 to this report. They include cases involving intellectual property, communications,

computer science and other emerging technologies and their impact on existing and new markets for products in the United States and throughout the rest of the world.

2. One of the most rudimentary principles of economic analysis is that price drives consumer transactions. A consumer faced with what appears to be equal or roughly equal choices in quality, convenience, durability and the like will invariably be driven by price and typically choose the less expensive product or service. Consumers are, in fact, often willing to suffer an inferior product or service to achieve a cost savings.

3. This basic proposition about purchasing behavior has, to a significant degree, been affected by the availability of materials at no cost via the Internet. That is, consumer expectations are influenced by the fact that products are made available without charge. If a consumer is able to obtain something as simple as a newspaper article, photograph or other material via the Internet without being required to pay anything for it, that consumer becomes conditioned to expect that item for free in the future, and becomes less inclined to pay anything (even a reduced price) for it. While I assume that the vast majority of consumers in the United States who utilize the Internet are law-abiding citizens who would not normally take something which they knew or believe to be stolen, people are becoming increasingly conditioned to accept what appears to be an innocuous activity when they obtain materials from the Internet even when it may not be legal to do so. There is, I believe, a mindset which operates on the basis that if it were not okay to take such material, that material would not be there for the taking in the first place. I am aware of many anecdotal reports in the news media within the last year concerning precisely this attitude on the part of college students

and others who claim to know that their uploading and downloading of unauthorized copies of audio recordings on the Internet is illegal, but engage in those acts anyway.

4. Mixed in with this mindset and conditioned behavior on the part of consumers is a certain hostility toward established businesses and a certain degree of righteous indignation against having to be charged anything for pursuits which do not seem to harm anyone other than large corporations and, perhaps, wealthy artists.

5. All of these factors play a part in encouraging consumers to take the view that activities in uploading and downloading materials on the Internet through software networks ("file sharing") is or should be legal. As a result, the use of these technologies grows as people are led to believe, at least among their peers, that using them is essentially a harmless act. Given the revolution in Internet activity over the last several years, these attitudes have become more pronounced and more mainstream.

6. I have reviewed the Declaration of Lewis Kurlantzick and seriously disagree with his conclusions. In essence, Professor Kurlantzick does not believe that there is any financial effect from the unauthorized reproduction of copyrighted materials on the Internet; concludes that persons who may get such material at little or no cost would not necessarily have purchased the legitimate product at a higher cost and further, suggests that the availability of unauthorized copies on the Internet will have little or no impact on the copyright holders of these works.

7. Although one could argue about whether financial considerations are the true incentive for creative artists, the fact is that businesses, like the motion picture business, depend upon recovery of their substantial investments in the production, distribution and marketing of feature films. These companies do so through the fees charged for licensing theatrical exhibition (in the United States and elsewhere throughout the world), video sales (including sales or licensing for the home

video markets) and licensing for premium, cable and eventual network television viewing. These companies often do not recover their costs in connection with many films which they produce and distribute, which only makes the need to profit on successful films even greater, to recover these lost investments.

8. The availability of unauthorized copies of feature length films on the Internet would have a considerable, negative financial and market impact on the major motion picture companies. First, as stated above, consumers who are conditioned to receiving something for free are less likely to pay for the same thing through legitimate channels. This has a particularly acute impact given the manner in which motion picture films are released and distributed. Once a film has been made available for free viewing (for example on network television), consumers are much less inclined to opt for that program as a premium cable choice or a video purchase or rental. Thus, ready availability of unauthorized copies of feature films on the Internet will, in my estimation, have a serious effect on the ability of motion picture companies to realize their necessary profits in the licensing and distribution of authorized films through the trade channels described above.

9. Likewise, any expectation that the film companies have to develop a legitimate market on the Internet for the delivery of their films will be significantly thwarted by the presence of unauthorized product available at little or no charge to the consumer.

10. Once a film has been released in home video format it is not freely available to consumers on network TV for some period of time. However, if immediately upon home video release, that film is immediately available on the Internet, that will undoubtedly impact home video sales and licensing of the film. This home video market is a significant source of income for film producers and studios and often represents the difference between a profitable and unprofitable production. Many films which do poorly at the box office are huge hits in the home video market and

some films are never exhibited theatrically or exhibited for only a brief period of time before being released in home video formats.

11. I am thus in serious disagreement with Professor Kurlantzick if it is his opinion that the availability of unauthorized product "for free" on the Internet will not have a serious financial market impact upon those companies which are in the business of producing and distributing feature films.

12. I also find less than compelling John Gilmore's claim that once a movie has been released on DVD the copyright holder has "been compensated; the toll has been paid; the user is a consumer, not a thief" Gilmore Decl para 9. If Mr. Gilmore recognizes that advances in technology will lead to Internet delivery of motion pictures, he must also recognize that the sale of a single DVD movie may lead to its unauthorized reproduction and transmission to a potential audience of millions, who would never have to pay a thing to have access to view or further copy it.

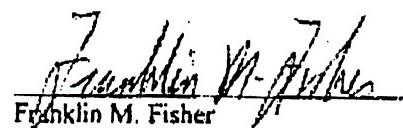
13. Barbara Simon's views, based on a copyright policy that allows "unlimited non-commercial copying" have no applicability to a model involving content that is only made available, through licensing or the sale of copies, for a fee.

14. The holder of a copyright has invested in the production of the copyrighted work (or purchased it from someone who has so invested). The incentive to so invest and so produce depends on the returns that are expected to accrue when the copyrighted work is licensed and exploited. To permit the free copying of such a work is to interfere with that incentive. Even to make it uncertain whether there will be free copying so interferes, for it exposes the copyright holder to otherwise unanticipated risk without offering additional return in compensation.

15. As is always the case with intellectual property, if there were only ever to be a single work, then, once a work has been created, it would be beneficial if it could be distributed at zero marginal cost -- i.e., freely copied. But to permit this would adversely affect the creation of later works. This is the whole economic rationale for the protection of intellectual property. It must not be forgotten.

I declare, under penalty of perjury, that the foregoing is true and correct.

Dated June 1, 2000



Franklin M. Fisher